IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8647 of 1988
With
CIVIL APPLICATION NO.1759 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GSRTC
Versus
VIJAYSINH G PANDAY

Appearance:
1. Special Civil Application No. 8647 of 1988
MR PRANAV G DESAI for Petitioner No. 1
MR MUKESH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/06/2002

ORAL JUDGEMENT

#. This petition is filed by the S.T.Corporation challenging the award passed by the Labour Court, Rajkot in Reference (LCR) No.1284 of 1985.

#. The respondent workman was subjected to the departmental proceedings for remaining absent without prior permission. The case of the workman was that, because of his illness, he could not attend the duty and that, he sent leave report along with the medical certificate. Departmental proceedings proceeded ex parte and ultimately, he was dismissed from service. The statement of claim of the workman was denied by the Corporation on various grounds. The say of the Corporation was that the departmental inquiry was conducted in accordance with the principles of natural justice. The Labour Court came to the conclusion that the workman remained absent from time to time. The say of the workman, therefore, did not find favour with the Labour Court and in that behalf, detailed reasoning is given by the Labour Court in para 8 of the award. However, the Labour Court, while exercising the powers under section 11-A of the Industrial Disputes Act, came to the conclusion that the penalty of dismissal is on higher side and ultimately the Labour Court substituted the same by imposing the penalty of withholding of three increments without cumulative effect.

#. I have heard Mr.Desai for the petitioner and Mr.Rathod for the respondent workman.

#. Considering the facts and circumstances of the case, in my view, so far as the award of the Labour Court regarding imposing the penalty of withholding of three increments without cumulative effect is concerned, the same is not required to be interfered with as the same is just and proper. It is required to be noted that, at the time of admitting this petition, the order of reinstatement is not stayed and accordingly the concerned workman is already in service, and therefore, considering the facts and circumstances of the case, while upholding the penalty inflicted by the Labour Court, the order of the Labour Court is required to be modified regarding the payment of back wages. In my view, since the misconduct is already proved, this is not a case in which the amount of back wages is required to be paid to the respondent workman. Under these circumstances, this petition is partly allowed. The order of the Labour Court regarding reinstatement as well as regarding withholding of three increments is confirmed. However, such reinstatement will be without any back wages for the intervening period. Rule is made absolute accordingly with no order as to costs.

In view of the order passed in the main matter,

no order on Civil Application No.1759/93. Civil Application stands disposed of.

(P.B.Majmudar,J)
(pathan)